THE HON'BLE SRI JUSTICE V.V.S. RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

W.P.No.21153 of 2003

Date: 09. 08 .2007

Between:

Bandaru Nagabhushanam S/o Chalamaiah
Aged 52 years, Occ: Agriculture,
R/o H.No.7-1-238/Z, Opp. Prabhakar Rao
Hospital, Bandarugudem, Manuguru Mandal
Khammam district

…..Petitioner

And:

The Agent to Government at Khammam & 11 others

…. Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

W.P.No.21153 of 2003

ORDER:(Per Hon'ble Sri Justice G.V.Seethapathy, J)

This writ petition is filed challenging the order dated 16.09.2003 in OP No.11 of 2001 passed by the first respondent, wherein, the respondents 4 and 5 herein were directed to be put in possession of the schedule lands by evicting the respondents 6 to 12 and the petitioner.

2. The case of the petitioner is that Kondru Sammaiah and Kondru Kannaiah, tribals were the absolute owners and possessors of the land admeasuring Ac.2.26 guntas in Survey No.283 of Bandurugudem village of Manuguru Mandal, Khammam district and they sold an extent of 10 guntas in favour of the petitioner under a registered sale deed dated 25.7.1985. The respondent No.6 gave a representation dated 25.5.2001 seeking restoration of possession for himself, 4th respondent and others by implementing the orders passed in the year 1997. The Special Deputy Collector (TW), Bhadrachalam by order dated 31.5.2001 directed action to be taken against non-tribals. Accordingly, the land was sold in favour of the petitioner and possession was delivered to him on 15.6.2001 and ever since he has been in possession and enjoyment of the same and he raised constructions after obtaining due permission from the Gram Panchayat. The respondents 4 and 5 having fought against each other earlier, joined hands and filed LTR Case No.757 of 2001 before the first respondent against the respondents 6 to 12 and obtained a direction to the Station House Officer, Manuguru to enforce the order passed under Section 6(A) of the A.P.S.A. Land Transfer Regulation Act, 1959 (for short 'Regulation'). The police and the Mandal Revenue Officer visited the land and declared that the respondents are not in illegal occupation and they are occupying their respective shops as tenants. The respondents 4 and 5 again filed a petition for appointment of a Commissioner for conducting enquiry and the Revenue Divisional Officer was appointed as Enquiry Officer and he submitted his report on 20.6.2002 stating that the petitioner is the absolute owner of the

property. Inspite of the same, the first respondent passed impugned orders in OP No.11 of 2001 directing eviction of the respondents, ignoring the registered sale deed in favour of the petitioner executed by 5th respondent and his brother. The petitioner further claims that his name has been entered in the revenue records since 1994 and gram panchayat records since 2001. He therefore seeks quashing of the orders passed by the first respondent on 16.9.2003 in OP No.11 of 2001 wherein the first respondent directed restoration of possession in favour of respondents 4 and 5 herein.

The first respondent and 4th respondent filed separate counters and the petitioner filed reply affidavit also.

Arguments of the learned counsel for the petitioner and respondents are heard. Records are perused.

As seen from the pleadings of both parties, contentious, questions as to the title and possession are raised by both sides, which are required to be decided on appreciation of the evidence on record. There has been long drawn earlier litigation also between the parties. The petitioner seeks to rely upon the pahanies, tax receipts and other revenue and panchayat records besides the report of the Revenue Divisional Officer, who was appointed as a Commissioner in support of his claim of possession by virtue of purchase under a registered sale deed dated 25.7.1985 from 5th respondent and his brother. The fourth respondent claims that the property is ancestral property of herself and 5th respondent and they are absolute owners thereof and the sale deed dated 25.7.1985 by Sammaiah and Kannaiah in favour of petitioner in respect of 10 guntas is not genuine. She further denies that possession was delivered to the petitioner by 4th respondent on 15.6.2001 and alleges that the transaction if any was only benami at the instance of the non-tribals-respondents 6 to 12.

Contentious questions of fact, which need to be considered on appreciation of evidence oral and documentary, cannot be gone into in the present proceedings under Article 226 of the Constitution. Further, the petitioner has an effective and alternative remedy of appeal against the orders of the first respondent-Agent to the State Government under Section 3(3)(a) of the Regulation. The petitioner is at liberty to avail the said remedy of appeal within one month from the date of receipt of copy of this order and if any such appeal is filed, the State Government shall dispose of the same within a period of three months from the date of its filing.

The writ petition is accordingly disposed of with the above direction. No order as to costs.

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V.V.S.RAO, J

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G.V.SEETHAPATHY, J

Date:09.08.2007
BSS